ment D.5. No reply to that letter was received by the appellant.

On 14th April 1965 the appellant entered into an agreement with a building contractor for the erection of four houses on the land at an agreed price of $27,800.

On 22nd April 1965, the respondents through their solicitor wrote a letter to the appellant pointing out that he had unlawfully erected the buildings on their land without their knowledge or consent and requesting him to demolish and remove the same.

As I have stated the action brought by the respondents was for recovery of possession from the appellant of the land in question of which they have become registered proprietors as representatives, upon the allegation that the appellant was in unlawful occupation of the land and had built houses thereon without their knowledge and consent. The appellant denied that he was in unlawful occupation. His contention being that he was in possession of the land and had erected buildings on it under the sale agreement between himself and Lim Pheng as administratrix and that he was counterclaiming for specific performance of that agreement.

In the defence to the counterclaim the respondents said that it was barred by the Limitation Ordinance 1953.

The learned judge held that the appellant was given possession of the said land in pursuance of the agreement in question and that he had retained possession ever since.

The learned judge, however, finally dismissed the counterclaim on the ground that it was barred by limitation, in that 12 years had elapsed between the date of the agreement (30th December 1950) and the date of the counterclaim (16th September 1965). Both counsel conceded that this being an action for recovery of land the period of limitation was 12 years.

There are several grounds of appeal but the substantial question we have been asked to decide is when the right of action by the appellant accrued, namely whether it was the date of agreement as held by the judge or the date of the letter Exhibit D.8 as urged by counsel for the appellant.

In *Bolo* v. *Koklan & Ors.*[1] one of the questions the Privy Council had to decide was as to when the right to sue accrues, for the purpose of article 120 in Schedule I of the Indian Limitation Act (IX of 1908).

The judgment of the Privy Council at page 331 has this to say:—

"There can be no 'right to sue' until there is an accrual of the right asserted in the suit and its infringement, or at least a clear and unequivocal threat to infringe that right, by the defendant against whom the suit is instituted."

In the present case clause 2 of the agreement D.5 says this:—

"The vendor (i.e. Lim Pheng) shall proceed to apply to the court for permission to cause a valid document of transfer to be executed in favour of the purchaser or his nominee for the effectual transfer of the said land to the purchaser (the appellant) or his nominee."

In my view, the cause of action in this case accrued on Lim Pheng's failure to take the necessary action under clause 2 of the agreement after the lapse of 14 days from the date of the letter D.8. This failure to initiate the necessary action appeared to me the first clear unequivocal threat to infringe appellant's right. That date would be 30th April 1955 and in the circumstances therefore, the appellant's counterclaim filed on 16th September 1965 would be within time.

I would therefore allow the appeal, set aside the judgment of the court below and direct that the respondents transfer the land in question to the appellant on payment of $1,000 by the appellant to the respondents. The respondents will pay the costs of this appeal and also costs in the court below.

Pike C.J. (Borneo) and **MacIntyre F.J.** concurred.

Appeal allowed.

Solicitors: *Oorjitham & Lam; T.C. Tang & Co.*

FOO SAY LEE v. OOI HENG WAI

[F.C. (Barakbah L.P., Azmi C.J. (Malaya) & MacIntyre F.J.) August 29, 1968]

[Kota Bharu—Federal Court Civil Appeal No. X37 of 1968]

Land Laws — Malay reservation — Transfer of land from Malay reservation to non-Malay — Transfer subject to approval of State government and Ruler in Council — Whether void — Malay Reservations Enactment, 1930, ss. 7, 12 & 13A(i).

On August 19, 1958 the plaintiff entered into an agreement with the defendant for the purchase of a piece of land in Kota Bharu. On signing the agreement the plaintiff paid the defendant $1,500 and the balance of $3,500 was to be paid on the transfer of the land to the plaintiff. At the date of the agreement the land was held by a Malay. Condition 3 of the agreement provided that the sale was subject to the approval of the Kelantan government and the Ruler in Council. At the date of the writ the title of the land had been registered in the name of the defendant.

At the hearing in the court below the preliminary point was raised as to whether the said agreement was null and void under the Malay Reservations Enactment, 1930. The learned judge ruled that it was not null and void as it was an agreement to sell subject to the approval of the Kelantan government and the Ruler in Council. On appeal,

Held, dismissing the appeal: (1) only attempts to deal in reservation land contrary to the provisions of the enactment would be null and void. Although the agreement between the parties could be regarded as an

attempt to deal in reservation land, it was not an attempt to deal in the land contrary to the provisions of the Enactment;

(2) since section 13A(i) of the Enactment gives the power to the Ruler in Council in his discretion to approve a transfer of reservation land from a Malay to a non-Malay, it cannot be said that the agreement was an attempt to evade the provisions of the Enactment.

Case referred to:—

(1) *Idris bin Haji Mohamed Amin* v. *Ng Ah Siew* [1935] M.L.J. 257.

FEDERAL COURT.

Lim Kean Chye (*A. Wilson* with him) for the appellant/defendant.

H.L. Wrigglesworth for the respondent/plaintiff.

Cur. Adv. Vult.

Azmi C.J. (Malaya): This is an appeal by the defendant against the judgment of the High Court at Kota Bharu.

The plaintiff among other things, claimed for specific performance of an agreement to transfer a piece of land referred to as a private shop lot forming part of Lot 20 section 13, Bandar of Kota Bharu, District of Kota Bharu.

The facts of the case may be briefly stated as follows:—

On 19th August 1958, the two parties made an agreement in reference to a piece of land in the Malay Reservation area, the particulars of which were written in a memorandum signed by the defendant. On the signing of the memorandum, the plaintiff paid the defendant $1,500 and the balance of $3,500 was to be paid on the transfer of the land to the plaintiff. At the date of the agreement the land was still held by a Malay. Condition 3 of the agreement provides that the sale was subject to the approval of the Kelantan government and His Highness the Ruler in Council.

It was, however, admitted by both sides that at the date of the writ (27th July 1965) the title of the land had been registered in the name of the defendant.

At the outset of the trial before the High Court, it was agreed by counsel that the court should consider a preliminary point of law which the learned judge chose to put as follows:—

"Is the agreement dated 19th August 1958 null and void under the Malay Reservations Enactment 1930 and if so is the plaintiff entitled to specific performance of the said agreement and for damages for breach."

At the hearing of the appeal, however, Mr. Wrigglesworth, maintained that what was agreed to was that the learned judge was to decide as a preliminary point simply the question whether the said agreement was null and void as raised by paragraph (3) of the statement of defence. The said paragraph 3 is as follows:—

"The defendant will aver that the alleged agreement is null and void under section 12 of the Malay Reservations Enactment 1930 of Kelantan as the said land is a Malay Reservation area and comes within the provisions of the said Enactment."

In other words, the second question whether the plaintiff is entitled to specific performance of the said agreement or for damages for breach was still to be considered by the learned judge. Having studied the record we agree this was so.

The learned judge, however, dismissed the preliminary issue. He came to the conclusion that the agreement as he saw it could not be anything more than an agreement to sell subject to the approval of the Kelantan government and His Highness the Ruler in Council and therefore was not null and void.

As admitted in the pleadings of both parties the land is now in the name of the defendant, but we were asked to consider the question of the validity of the agreement as it stood on 19th August 1958 when the land was still held in the name of a Malay.

The substantial grounds of appeal are as follows:—

(1) The learned judge should have held that as the defendant had purported to contract to transfer the right or interest in the land to the plaintiff the agreement of 19th August 1958 was prohibited under section 7(i) of the Malay Reservations Enactment of Kelantan.

(2) The learned judge should have held that the said agreement was dealing, disposal or attempt to deal in or dispose of Reservation land contrary to section 12(i) of the said Enactment."

Mr. Lim Kean Chye for the appellant firstly pointed out to us that the claim by the plaintiff was not for an order that the defendant shall apply to the Ruler in Council for a transfer of the said land to the plaintiff, but was for an order that the defendant transfer to her the said land. That appears to be so according to the pleadings.

He went on further to say that the agreement was an attempt to deal with Reservation land and therefore null and void under section 12.

Sections 7(i) and 12(i) read as follows:—

7(i) "No right or interest of any Malay in Reservation land and no right or interest in such land acquired by virtue of section 13A by any person not being a Malay shall be transferred to or transmitted to or vest in any person not being a Malay provided that leases of Reservation land shall be valid to the extent specified in sub-sections (ii) to (v) below, save as provided in this Enactment."

12(i) "All dealings or disposal whatsoever and all attempts to deal in or dispose of Reservation land contrary to the provisions of this Enactment shall be null and void."

I think it is convenient now to refer to section 13A(i). It reads as follows:—

13A(i) "His Highness the Ruler in Council may approve —

(a) . . . .

(b) the transfer or transmission of the right or interest of any Malay in reservation land, and

(c) the transfer or transmission of any reservation land acquired by virtue of this section, by any person not being a Malay,

to any person not being a Malay, subject to the imposition of such restrictions in interest and such conditions in the document of title and such terms of rent as he may think fit: . . . ."

Mr. Lim Kean Chye cited to us several cases in support by analogy of his contention that the agreement or memorandum made at the time when it was still registered in the name of a Malay was an attempt to dispose of Malay reservation land and was therefore null and void under section 12 of the Kelantan Malay Reservations Enactment.

With respect, in my view, this question could be solved this way. If you read section 12(i) carefully, it will be apparent that only attempts to deal in Reservation land contrary to the provisions of the Enactment (the underlining is mine) would be null and void so that though the agreement between the two parties could be regarded as an attempt to deal in reservation land it is not in my view, an attempt to deal in the land contrary to the provisions of the Enactment.

My reasons are simply this. Section 13A(i) of the Enactment gives the power to His Highness the Ruler in Council in his discretion to approve a transfer of a right or interest of any Malay in Reservation land to any person not being a Malay. Since the Enactment itself has provided a method of effecting a transfer of a Reservation land from a Malay to a non-Malay, I am unable to come to the conclusion that any agreement to transfer such land by a method so provided by the Enactment itself, can be said to be contrary to the provisions of the Enactment and therefore null and void under section 12; nor could it be said that the agreement is an attempt to evade the provisions of the Enactment. (See judgment of Thomas C.J. in *Idris bin Haji Mohamed Amin* v. *Ng Ah Siew* [1] at page 258).

In the circumstances, I would hold that the agreement is not null and void.

The appeal is therefore dismissed with costs.

Barakbah L.P. and **MacIntyre F.J.** concurred.

Appeal dismissed.

Solicitors: *Wilson & Co.; Wrigglesworth & Co.*

K.R. TAXI SERVICE LTD. & ANOR. v. ZAHARAH & ORS.

[F.C. (Ong Hock Thye, Suffian and McIntyre F.JJ.) October 15, 1968]

[Kuala Lumpur—Federal Court Civil Appeal No. X15 of 1968]

Negligence — Highway — Duty of driver of motor vehicle — Duty is only to exercise reasonable care but not to be a perfectionist — No strict liability.

Damages — Fatal accident — Civil Law Ordinance, 1956, ss. 7 & 8 — "Gratuity" money given by government to assist deceased's family — Whether deductible.

This was an appeal against the decision of the High Court in an action for damages against the driver of two motor vehicles involved in a collision which resulted in the death of a passenger in one of them. The learned trial judge held that the driver of the car (3rd respondent) was primarily to blame but assessed the liability of the taxi driver (2nd appellant) at 25 per cent. He found that the 3rd respondent was to blame as he was negligent in turning across the path of oncoming traffic but he also found that the taxi driver was to blame as he should have anticipated the common folly of motor-car drivers to cross the line of oncoming traffic. He awarded damages under section 7 of the Civil Law Ordinance at $26,000 and under section 8 at $3,500 merged with that under section 7. He also held that no deduction was to be made in respect of a sum of $20,000 given to the family of the deceased by the State Government. The appellants appealed against the apportionment of liability.

Held: (1) the duty of a driver is only to exercise reasonable care; he is not under a duty to be perfect in the sense of being able to anticipate other drivers acting in a negligent or irresponsible manner;

(2) in this case there was no evidence to show that the taxi driver failed to exercise ordinary care and skill and therefore he could not be held to blame for the accident.

Per Raja Azlan Shah J. in the court below: " 'Gratuity' in the proviso [to section 7(3) of the Civil Law Ordinance, 1956] must be construed as apt to include all direct payments of money by third parties to the dependants as a measure of assistance. Such benefit is not deductible."

Cases referred to:—

(1) *Brophy* v. *Shaw* (unreported) *The Times*, June 25, 1965, [1965] C.L.Y. 2677 C.A.

(2) *Edwards* v. *Nobbs* (1963), 1st Supplement to *Bingham's* All the Modern Cases on Negligence (2nd Ed.) unreported Court of Appeal decision.

(3) *London Passenger Transport Board* v. *Upson* [1949] A.C. 155, 173.

In the court below *R.S. Sodhy* appeared for the plaintiff, *G.T.S. Sidhu* for the 1st defendant, *Denis Murphy* for the 2nd and 3rd defendants. The following judgment was delivered on February 6, 1968.

Raja Azlan Shah J.: This is a claim for damages under sections 7 and 8 of the Civil Law Ordinance, 1956. The facts are as follows.

On 6th August 1964 the deceased, Mohamed Noor bin Sulaiman, was a passenger for reward in a taxi driven by defendant No. 3 and owned